

Circuit Court for Baltimore City
Case No. 24-C-20-004889

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0516

September Term, 2021

JANICE OUTEN

v.

MARYLAND DEPARTMENT OF THE
ENVIRONMENT

Nazarian,
Zic,
Ripken,

JJ.

Opinion by Zic, J.

Filed: September 19, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order of the Circuit Court for Baltimore City affirming the decision of the Office of Administrative Hearings (“OAH”) to dismiss Janice Outen’s grievance. The Administrative Law Judge (“ALJ”) dismissed the case as untimely filed under § 12-203 of the State Personnel and Pensions Article. The ALJ also held that OAH lacked jurisdiction over the grievance under § 7-210 of the same article.

On appeal, Ms. Outen raises two issues, which we have recast as follows¹:

1. Did the circuit court err in affirming the decision of the ALJ to dismiss the case as untimely filed?
2. Did the circuit court err in affirming the decision of the ALJ that OAH lacked authority to consider Ms. Outen’s grievance?

For the reasons explained below, we affirm the circuit court.

BACKGROUND

Janice Outen was a Regulatory Compliance Engineer, Architect Supervisor (“RCE Supervisor”) in the Water Resources Planning Division of the Maryland Department of the Environment (“Department”) for nine years. On May 22, 2019, the Department reassigned Ms. Outen to the Water Supply Program, which she believed to be a demotion. On November 13, 2019, the Department advertised Ms. Outen’s former role of RCE Supervisor as vacant. Ms. Outen applied for her former position in December 2019 and interviewed for it in January 2020. On February 27, 2020, Ms. Outen learned that she was not selected for the supervisor position.

¹ Appellant phrased the issues as a single question: “Whether the ALJ below erred in dismissing the instant grievance as untimely filed, and in finding that the OAH lacked authority to consider the issues raised in the Employee’s grievance?”

On March 18, 2020, Ms. Outen filed a grievance to the Director of the Water and Science Administration under Step One of the three-step employee grievance procedure prescribed by § 12-201 of the State Personnel and Pensions Article. Md. Code Ann., State Pers. & Pens. § 12-201(a)(1)(i). In her grievance, Ms. Outen asserted that her reassignment to the Water Supply Program role violated Maryland law. She characterized her new position as “a position of significantly diminished duties and responsibilities – [she] no longer managed a division nor did [she] supervise any employees.” She also alleged that the Department’s selection of a less qualified candidate for her former role of RCE Supervisor violated Maryland personnel law. The Director denied the grievance.

On April 3, 2020, Ms. Outen initiated Step Two of the grievance procedure, filing a grievance with the Secretary of the Department pursuant to § 12-201. State Pers. & Pens. § 12-201(a)(1)(ii). On April 13, 2020, the Secretary, through the Deputy Secretary, denied her appeal. Then, on April 21, 2020, Ms. Outen filed an appeal to the Department of Budget and Management (“DBM”) pursuant to Step Three of the grievance procedure. On June 12, 2020, the DBM sent the case to OAH for a hearing.

The ALJ dismissed the case as untimely filed because Ms. Outen did not file it within 20 days—the statutory time period for filing a grievance under § 12-203—of when she reasonably should have known of the basis of her grievance. The ALJ also held that OAH lacked authority to resolve Ms. Outen’s grievance because the Director’s decision was final under § 7-210 of the State Personnel and Pensions Article. Ms. Outen then

appealed to the circuit court, which affirmed the ALJ’s decision, holding that the ALJ did not err as a matter of law on either issue. She now appeals to this Court.

DISCUSSION

When faced with an ALJ’s decision, our task mirrors that of the circuit court. *Stover v. Prince George’s Cnty.*, 132 Md. App. 373, 380 (2000) (citing *Dep’t of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 303-04 (1994)). That is, we must directly evaluate the ALJ’s conclusions. *Motor Vehicle Admin. v. Medvedeff*, 466 Md. 455, 464 (2019) (quoting *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 367 (2016)). Moreover, the scope of our review is narrow. *Stover v. Prince George’s Cnty.*, 132 Md. App. 373, 381 (2000) (quoting *United Parcel Serv., Inc. v. People’s Counsel for Balt. Cnty.*, 336 Md. 569, 576 (1994)). Ordinarily, we review “an agency’s legal conclusions without deference ‘for correctness.’” *Merryman v. Univ. of Balt.*, 473 Md. 1, 26 (2021) (quoting *Schwartz v. Md. Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)). However, “[t]he legal conclusions of an administrative agency that are premised upon an interpretation of the statutes that the agency administers are afforded great weight.” *Gore Enter. Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 505 (2014) (cleaned up).

We affirm the circuit court’s decision. OAH did not err in dismissing Ms. Outen’s grievance as untimely filed. Nor did the ALJ err in determining that OAH lacked authority to consider her grievance. We first address the untimely filing issue and then turn to whether OAH had jurisdiction over Ms. Outen’s grievance.

A. Timeliness

Ms. Outen contends that her grievance was timely filed under § 12-203 of the State Personnel and Pensions Article. State Pers. & Pens. § 12-203. She asserts that she filed it within 20 days of becoming aware of the Department’s failure to abide by its policies. She also claims that prior to February 27, 2020, she believed the Department was complying with correct hiring practices and thus did not have enough information to file her grievance. She contends that she could only file her grievance once she was not selected for her former position.

The Department argues that the clock started ticking for her to file her grievance on May 22, 2019, when Ms. Outen was reassigned to a different department. The Department claims that Ms. Outen believed her new position to be a demotion when the reassignment occurred and thus had enough information to file her grievance at that time. The Department further argues that even if Ms. Outen’s reassignment did not put her on notice to file a grievance, the Department’s advertisement of her former position certainly did.

When a statute creates both the right and the remedy, courts interpret a filing deadline as a condition precedent. *Rios v. Montgomery Cnty.*, 386 Md. 104, 127 (2005). A condition precedent is “a condition attached to the right to sue at all . . . [and] the action itself is fatally flawed if the condition is not satisfied.” *Ferguson v. Loder*, 186 Md. App. 707, 714 (2009).

Section 12-203(b) requires that “a grievance procedure must be initiated by an employee within 20 days after: (1) the occurrence of the alleged act that is the basis of the

grievance; or (2) the employee first knew of or reasonably should have known of the alleged act that is the basis of the grievance.” State Pers. & Pens. § 12-203(b).

Accordingly, the operative date is when the grievant either knows that an injury has occurred or when the grievant discovered facts which provide notice of the injury.

Rounds v. Maryland-Nat’l Capital Park and Planning Comm’n, 441 Md. 621, 655 (2015).

Here, § 12-103 created Ms. Outen’s right to bring a grievance while § 12-203 limited the right to bring the grievance within 20 days. Because the statute created and limited the right, the filing deadline is a condition precedent. As such, an untimely grievance is subject to dismissal.

Ms. Outen’s grievance was based on her reassignment, which took place on May 22, 2019. At that time, Ms. Outen knew that an injury had occurred because she had been moved from one position to another with “significantly diminished duties and responsibilities.” Similarly, the Department’s advertisement to fill her former position should have given Ms. Outen reason to believe that she had been injured. Ms. Outen became aware of the advertisement by December 2, 2019 when she applied for the position. As Ms. Outen’s requested relief was reinstatement to her former position, she had enough information to file her grievance in May 2019, or, at the very latest, in December 2019 when she applied to her former position.

Because Ms. Outen filed her grievance long after the statutory deadline had passed, the ALJ correctly dismissed her grievance as untimely filed.

B. Jurisdiction of OAH

Ms. Outen claims that the grievance procedure under Title 12 of the State Personnel and Pensions Article is her exclusive remedy, and thus, this suit must proceed. She cites *Maryland Military Dep't v. Cherry*, where the Court of Appeals held that § 12-103 establishes the grievance procedure as the exclusive remedy. 382 Md. 117, 124 (2004). Similarly, Ms. Outen claims that the Step Two decision written by the Deputy Secretary is further proof that she has a right to appeal to the DBM under § 12-205.

By contrast, the Department asserts that Ms. Outen must follow procedure under § 7-210 and appeal her nonselection to the appointing authority. The Department argues that the Step Two decision letter included incorrect advice and cannot be relied upon by Ms. Outen to create a right to appeal where one is not statutorily granted.

Section 12-103 provides that “unless another procedure is provided for by this article, the grievance procedure is the exclusive remedy through which a nontemporary employee in the State Personnel Management System may seek an administrative remedy for violations of the provisions of this article.” State Pers. & Pens. §12-103. Section 7-210 of the State Personnel and Pensions Article, however, provides the procedure for applicants who are not selected for a position. State Pers. & Pens. § 7-210.

In *Dozier v. Dep't of Human Res.*, this Court held that the plaintiff did not have a right to judicial review where a statute provided none. 164 Md. App. 526, 537 (2005). In that case, the employee filed an appeal for judicial review after receiving a final determination by the employee's appointing authority. *Id.* at 530. The relevant statute, § 11-113 of the State Personnel and Pensions Article, provided that the head of the

principal unit makes the final administrative decision regarding terminations. State Pers. & Pens. § 11-113(d)(3). Furthermore, the statute did not grant employees a right to judicial review. *Id.* at 537. Because the General Assembly makes clear when it intends to grant employees a right to judicial review, courts will not grant such judicial review rights when it is not provided in the statute. *Id.* Therefore, the employee's case was correctly dismissed. *Id.*

In this case, Ms. Outen's grievance of her nonselection must be made under § 7-210. Section 12-103 grants employees the right to use a grievance process unless another procedure is provided for. Section 7-210 provides procedure for employees who have not been selected for a position. Because Ms. Outen grieved her nonselection to her former position, she was required to follow procedure under § 7-210.

Section 7-210 states that an appeal must be made to an appointing authority. State Pers. & Pens. § 7-210. Both parties agree that the appointing authority in this case is the Director of the Water and Science Administration. Section 7-210 mirrors the statute in *Dozier* because both statutes provide that the appointing authority's decision is final and do not grant employees a right to judicial review of such decision. State Pers. & Pens. § 7-210(c) (2015). Even though the Deputy Secretary claimed that the grievance procedure in § 12-103 was a proper avenue for Ms. Outen, we will not find a right where a statute does not provide one.

Because the relevant statute did not grant Ms. Outen a right to judicial review, OAH lacked authority to consider Ms. Outen's nonselection grievance.

CONCLUSION

In sum, we affirm the circuit court’s conclusion that the ALJ did not err as a matter of law in concluding that Ms. Outen’s grievance must be dismissed as untimely filed and because OAH lacked authority to consider it.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**